

House File 741 - Introduced

HOUSE FILE 741
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 207)

A BILL FOR

1 An Act relating to the location and marking of underground
2 facilities and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 480.1, Code 2021, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 5A. "*Forty-eight-hour period*" means:

4 a. For a notice received by the notification center on or
5 before 12:00 p.m., a period of forty-eight hours beginning at
6 12:00 p.m. on the day the notification center receives the
7 notice.

8 b. For a notice received by the notification center after
9 12:00 p.m., a period of forty-eight hours beginning at 11:59
10 p.m. on the day the notification center receives the notice.

11 NEW SUBSECTION. 5B. "*Locator*" means a person who engages
12 in, or proposes to engage in, the location and marking of
13 underground facilities pursuant to a contract with an operator.
14 "*Locator*" does not include an employee of an operator.

15 NEW SUBSECTION. 11. "*Utilities board*" means the utilities
16 board within the utilities division of the department of
17 commerce.

18 Sec. 2. Section 480.4, subsection 3, paragraph a,
19 subparagraphs (1) and (2), Code 2021, are amended to read as
20 follows:

21 (1) An operator who receives notice from the notification
22 center shall mark the horizontal location of the operator's
23 underground facility and the excavator shall use due care in
24 excavating in the marked area to avoid damaging the underground
25 facility. The operator shall complete such locating and
26 marking, and shall notify the notification center that the
27 marking is complete within ~~forty-eight hours after receiving~~
28 ~~the notice~~ a forty-eight-hour period, excluding Saturdays,
29 Sundays, and legal holidays, unless otherwise agreed by the
30 operator and the excavator. No later than the expiration of
31 the forty-eight-hour period, excluding Saturdays, Sundays,
32 and legal holidays, the notification center shall notify the
33 excavator of the underground facility locating and marking
34 status, or the failure of the operator to notify the center
35 that the locating and marking is complete. The locating and

1 marking of the underground facilities shall be completed at no
2 cost to the excavator. If, in the opinion of the operator,
3 the planned excavation requires that the precise location
4 of the underground facilities be determined, the excavator,
5 unless otherwise agreed upon between the excavator and the
6 operator, shall hand dig test holes to determine the location
7 of the facilities unless the operator specifies an alternate
8 method. The operator may contract with a locator to perform
9 the locating and marking. A locator contracted to perform
10 locating and marking for an operator shall be subject to the
11 same requirements for locating and marking as established in
12 this chapter for an operator.

13 (2) The marking required under [this subsection](#) shall be
14 done in a manner that will last for a minimum of five working
15 days on any nonpermanent surface, or a minimum of ten working
16 days on any permanent surface. If the excavation will continue
17 for any period longer than such periods, the operator shall
18 remark the location of the underground facility upon the
19 request of the excavator. The request shall be made through
20 the notification center. The operator shall complete the
21 remarking and notify the notification center it has done
22 so within a forty-eight-hour period, excluding Saturdays,
23 Sundays, and legal holidays, unless otherwise agreed by the
24 operator and the excavator. No later than the expiration of
25 the forty-eight-hour period, excluding Saturdays, Sundays,
26 and legal holidays, the notification center shall notify the
27 excavator that the operator has completed the remarking or has
28 failed to notify the notification center that the remarking was
29 completed.

30 Sec. 3. Section 480.4, subsection 3, paragraph b, Code 2021,
31 is amended to read as follows:

32 b. An operator who receives notice from the notification
33 center and who determines that the operator does not have
34 any underground facility located within the proposed area of
35 excavation shall notify the notification center concerning

1 this determination within ~~forty-eight hours after receiving~~
 2 ~~the notice~~ a forty-eight-hour period, excluding Saturdays,
 3 Sundays, and legal holidays. No later than the expiration of
 4 the forty-eight-hour period, excluding Saturdays, Sundays,
 5 and legal holidays, the notification center shall notify the
 6 excavator that the operator does not have any underground
 7 facilities within the proposed area of excavation.

8 Sec. 4. Section 480.6, Code 2021, is amended to read as
 9 follows:

10 **480.6 Civil penalties.**

11 1. A person who violates a provision of **this chapter** is
 12 subject to a civil penalty as follows:

13 a. For a violation related to natural gas and hazardous
 14 liquid pipelines, an amount not to exceed ten thousand dollars
 15 for each violation for each day the violation continues, up to
 16 a maximum of five hundred thousand dollars.

17 b. For a violation related to any other underground
 18 facility, an amount not to exceed one thousand dollars for each
 19 violation for each day the violation continues, up to a maximum
 20 of twenty thousand dollars.

21 c. For a locator's violation related to any time limit
 22 in this chapter or any standard established by the utilities
 23 board pursuant to section 480.11, an amount not to exceed one
 24 hundred dollars for each violation for each day the violation
 25 continues, up to a maximum of five thousand dollars. The
 26 utilities board shall establish, by rule, a schedule or range
 27 of civil penalties that it may assess in accordance with this
 28 paragraph.

29 2. The attorney general, upon the receipt of a complaint,
 30 may institute any legal proceedings necessary to enforce the
 31 penalty provisions of **this chapter**. The attorney general may
 32 refer a complaint to the utilities board to investigate the
 33 complaint. After investigating a complaint pursuant to this
 34 subsection, the utilities board shall provide the attorney
 35 general with a written summary of the investigation and all

1 evidence the utilities board acquired during the investigation.

2 3. The utilities board may independently receive,
3 investigate, and enforce all of the following complaints:

4 a. Complaints alleging a violation of section 480.11
5 pursuant to rules adopted by the utilities board.

6 b. Complaints alleging a violation of any time limit in
7 this chapter by an operator who is a public utility subject
8 to chapter 476. Pursuant to section 476.51, the utilities
9 board may impose a civil penalty on an operator who is a
10 public utility subject to chapter 476, and who violates any
11 time limit in this chapter, consistent with a schedule or
12 range established by rule under section 480.6, subsection 1,
13 paragraph "c".

14 4. The utilities board may provide the attorney general
15 with a written summary of an investigation under subsection
16 3 and all evidence the utilities board acquired during the
17 investigation.

18 5. Nothing in this chapter shall be construed to limit the
19 authority of the attorney general to enforce the terms of this
20 chapter. The attorney general's authority to enforce this
21 chapter is not contingent upon the utilities board's receipt
22 of a complaint, investigation of a complaint, or provision
23 of a summary of its investigation. The schedule or range of
24 civil penalties established by the utilities board pursuant to
25 subsection 1, paragraph "c", shall not apply to an action by the
26 attorney general to enforce the terms of this chapter.

27 ~~3.~~ 6. All amounts collected pursuant to this section shall
28 be remitted to the treasurer of state, who shall deposit the
29 amount in the general fund of the state.

30 Sec. 5. NEW SECTION. 480.11 Locator certificate.

31 1. A locator shall not engage in the location or marking
32 of underground facilities on behalf of an operator pursuant to
33 section 480.4 without first receiving a locator certificate
34 from the utilities board.

35 2. The utilities board shall establish, by rule, all of the

1 following:

2 *a.* The procedure for obtaining a locator certificate.

3 *b.* An application for a locator certificate. The
4 application shall require all of the following:

5 (1) A copy of the locator's basic organizational document.

6 (2) If the locator is not incorporated or organized in this
7 state, a copy of the locator's certificate of authority.

8 (3) Information related to the locator's insurance and
9 bonding.

10 (4) Information related to the training utilized by the
11 locator.

12 (5) Information related to the locator's experience
13 locating and marking underground facilities.

14 (6) Information related to complaints the locator has
15 received from an excavator, operator, or any other person
16 related to the locator's services.

17 (7) A statement that the locator agrees to comply with the
18 requirements of this chapter and rules adopted by the utilities
19 board pursuant to this chapter and chapter 476.

20 *c.* Performance standards applicable to locators, including
21 standards intended to ensure locators timely and accurately
22 complete their services as required by this chapter.

23 *d.* A schedule or range of civil penalties that the utilities
24 board may assess for violations of this section.

25 *e.* A procedure for the suspension or revocation of a locator
26 certificate.

27 3. A locator who has received a certificate from the
28 utilities board under this section shall not do any of the
29 following:

30 *a.* Enter into a contract with an operator that provides
31 incentive payments to the locator based on the number of
32 location and marking services performed by the locator.

33 *b.* Pay an employee or independent contractor based on
34 the number of location and marking services performed by the
35 employee or independent contractor.

c. Notify the notification center that the locator's services could not be completed as a result of a failure to contact the excavator unless the locator includes in the notification information showing the date, time, and method of the locator's attempted contact, including the name and contact information of the representative of the excavator that the locator attempted to contact.

8 4. A locator shall complete the timely and accurate locating
9 of underground utilities in the same manner as specified in
10 section 480.4, subsections 3 and 5.

11 5. An operator shall not be subject to any action under this
12 section.

13 6. The utilities board shall adopt rules pursuant to chapter
14 17A to administer and interpret this section.

EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill relates to the location and marking of underground
19 facilities and provides penalties.

20 The bill defines "forty-eight-hour period" as, for a notice
21 received by the notification center on or before 12:00 p.m.,
22 a period of 48 hours beginning at 12:00 p.m. on the day the
23 notification center receives the request, and for a notice
24 received by the notification center after 12:00 p.m., a period
25 of 48 hours beginning at 11:59 p.m. on the day the notification
26 center receives the request. The bill defines "locator"
27 as a person who engages in the location and marking of
28 underground facilities pursuant to a contract with an operator.
29 Additionally, the bill provides that "locator" does not include
30 an employee of an operator. The bill defines "utilities board"
31 as the utilities board within the utilities division of the
32 department of commerce.

33 The bill requires an operator who receives notice from the
34 notification center to mark the location of the operator's
35 underground facility, and notify the notification center

1 that the marking is complete, within a forty-eight-hour
2 period. The bill authorizes an operator to contract with a
3 locator to perform the locating and marking. Additionally,
4 the bill requires the operator to complete any remarking,
5 and requires the notification center to notify the excavator
6 of the operator's completion of the remarking, or the
7 operator's failure to notify the notification center, within a
8 forty-eight-hour period.

9 The bill requires an operator who receives notice from the
10 notification center and who determines that the operator does
11 not have any underground facility located within the proposed
12 area of excavation to notify the notification center within a
13 forty-eight-hour period.

14 The bill provides that if a locator violates a time limit in
15 Code chapter 480, or any standard established by the utilities
16 board, the locator shall be subject to a civil penalty in an
17 amount not to exceed \$100 for each violation for each day the
18 violation continues, up to a maximum of \$5,000. The bill
19 requires the board to establish, by rule, a schedule or range
20 of civil penalties that it may assess.

21 The bill authorizes the attorney general to refer a
22 complaint to the utilities board to investigate the complaint.
23 The bill provides that, after investigating a complaint, the
24 board shall provide the attorney general with a written summary
25 of the investigation and evidence the board acquired during the
26 investigation.

27 The bill authorizes the board to independently receive,
28 investigate, and enforce complaints alleging a violation of
29 new Code section 480.11 pursuant to rules adopted by the
30 board, and complaints alleging a violation of any time limit
31 in Code chapter 480 by an operator who is a public utility.
32 Additionally, the bill authorizes the board to provide the
33 attorney general with a written summary of the investigation
34 and evidence the board acquired during the investigation.

35 The bill provides that nothing in Code chapter 480 shall be

1 construed to limit the authority of the attorney general to
2 enforce the Code chapter. Additionally, the bill provides that
3 the attorney general's authority to enforce Code chapter 480 is
4 not contingent upon the board's receipt of a complaint.

5 The bill prohibits a locator from engaging in the location
6 or marking of underground facilities on behalf of an operator
7 without first receiving a locator certificate from the board.

8 The bill requires the board to establish by rule all of the
9 following: a procedure for obtaining a locator certificate, an
10 application for a locator certificate, performance standards
11 applicable to locators, a schedule or range of civil penalties
12 that the board may assess for violations, and a procedure for
13 the suspension or revocation of a locator certificate. The
14 bill provides requirements for the application for a locator
15 certificate.

16 The bill prohibits a locator who has received a certificate
17 from the board from entering into a contract with an operator
18 that provides incentive payments to the locator based on
19 the number of location and marking services performed or
20 from paying an employee or independent contractor based on
21 the number of location and marking services performed by an
22 employee or independent contractor. Additionally, the bill
23 prohibits a locator who has received a certificate from the
24 board from notifying the notification center that the locator's
25 services could not be completed as a result of a failure to
26 contact the excavator unless the locator includes in the
27 notification information related to the attempted contact.

28 The bill provides that an operator shall not be subject to
29 any action under new Code section 480.11.

30 The bill grants the board the authority to adopt rules to
31 administer and interpret the provisions of the bill relating to
32 new Code section 480.11.